



## **COUNCIL CHAMBERS**

17555 PEAK AVENUE    MORGAN HILL, CALIFORNIA 95037

### **COUNCIL MEMBERS**

Dennis Kennedy, Mayor  
Mark Grzan, Mayor Pro Tempore  
Larry Carr, Council Member  
Greg Sellers, Council Member  
Steve Tate, Council Member

**WEDNESDAY, JANUARY 18, 2006**

## **AGENDA**

## **CITY COUNCIL REGULAR MEETING**

**7:00 P.M.**

### **CALL TO ORDER**

(Mayor Kennedy)

### **ROLL CALL ATTENDANCE**

(City Clerk Torrez)

### **DECLARATION OF POSTING OF AGENDA**

Per Government Code 54954.2

(City Clerk Torrez)

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS**

National Volunteer Blood Donor Month  
*Mona Helmhold, Donor Recruitment Representative*

**CITY COUNCIL REPORT**

Mayor Kennedy

**CITY COUNCIL SUB-COMMITTEE REPORTS**

**CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

**OTHER REPORTS**

**PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND  
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE  
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY  
COUNCIL/REDEVELOPMENT AGENCY.**

**CONSENT CALENDAR:**

**ITEMS 1-11**                      The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

**Time Estimate**

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**Consent Calendar: 1 - 10 Minutes**

1. [INDOOR RECREATION CENTER PROJECT – DECEMBER CONSTRUCTION PROGRESS REPORT](#) .....7  
**Recommended Action(s): Information** Only.
2. [APPROVAL OF PURCHASE ORDERS TO U.S. FILTER FOR PERCHLORATE REMOVAL SYSTEMS OPERATION AT NORDSTROM AND TENNANT WELLS THROUGH JUNE 30, 2006](#) .....8  
**Recommended Action(s): Authorize** Issuance of Purchase Orders to U.S. Filter in the Amount of \$123,300.

**Time Estimate**  
**Consent Calendar: 1 - 10 Minutes**

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3. [\*\*LAND LEASE FOR GO KIDS AT GALVAN PARK\*\*](#) .....9  
**Recommended Action(s):**  
  1. **Approve** Land Lease Agreement; and
  2. **Authorize** the City Manager to Execute a Land Lease of a Portion of Galvan Park to Go Kids, a Non-Profit Corporation for the Fee of \$1.00 Per Year.
  
4. [\*\*AMENDMENT TO CONTRACT PROVIDING PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS\*\*](#) .....10  
**Recommended Action(s):**  
  1. **Approve** Amendment to the Contract with Testing Engineers, Inc. (TEI) to Increase the Contract Amount by \$50,000; and
  2. **Authorize** the City Manager to Execute the Contract Amendment, Subject to Review and Approval by the City Attorney.
  
5. [\*\*ACCEPTANCE OF MONTEREY ROAD BIKE DETECTION INSTALLATION PROJECT\*\*](#) .....11  
**Recommended Action(s):**  
  1. **Accept** as Complete the Monterey Bike Detection Installation Project in the Final Amount of \$40,903.50; and
  2. **Direct** the City Clerk to File a Notice of Completion with the County Recorder's Office.
  
6. [\*\*DOWNTOWN TRAFFIC CALMING – SIX MONTH REVIEW AFTER JUNE 2005 INITIAL INSTALLATION\*\*](#) .....13  
**Recommended Action(s):** **Information** Only at This Time.
  
7. [\*\*CONSULTANT AGREEMENT FOR DEVELOPMENT PROCESSING SERVICES CUSTOMER SERVICE STUDY\*\*](#) .....14  
**Recommended Action(s):** **Authorize** the City Manager to Execute a Contract with Colgan Consulting Corporation for the Purpose of Conducting a Customer Service Study of the City of Morgan Hill's Development Processing Services; Subject to Review and Approval by the City Attorney.
  
8. [\*\*DELTA DENTAL BENEFIT PLAN\*\*](#) .....20  
**Recommended Action(s):** **Authorize** the City Manager to Execute Amendments to the Dental Benefit Plan.
  
9. [\*\*SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND\*\*](#) .....21  
**Recommended Action(s):**  
  1. **Approve** the Fiscal Year 2005-2006 Spending Plan for the Supplemental Law Enforcement Services Fund (S.L.E.S.F.); and
  2. **Increase** the Fiscal Year 2005-2006 Police Budget within the General Fund by \$50,000 for the Cost of the Multi-Service Officer (MSO) Prisoner Transport Vehicle.
  
10. [\*\*PURCHASE OF POLICE MOTORCYCLES\*\*](#) .....22  
**Recommended Action(s):**  
  1. **Authorize** the Purchase of Two (2) Motorcycles from the Huntington Beach Honda Dealership Through Reliance Upon the Competitive Bid Process for a Total Cost of \$29,104.38; and
  2. **Declare** the Two (2) Vehicles Being Replaced as Surplus and **Authorize** the Sale of these Vehicles at Auction.

Time Estimate  
Consent Calendar: 1 - 10 Minutes

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11. **ADOPT ORDINANCE NO. 1748, NEW SERIES** .....24  
**Recommended Action(s):** **Waive** the Reading, and **Adopt** Ordinance No. 1748, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES.**

**OTHER BUSINESS:**

Time Estimate

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12. 5 Minutes **APPOINTMENT OF CITY ATTORNEY** .....31  
**Recommended Action(s):**  
1. **Appoint** Janet C. Kern as City Attorney for the City of Morgan Hill;  
2. **Approve** Employment Agreement; and  
3. **Authorize** the Mayor to Execute Employment Agreement on Behalf of the City.
13. 15 Minutes **DEPOT STREET RECONSTRUCTION PROJECT ON-STREET PARKING** .....39  
**Recommended Action(s):** **Approve** Staff Recommended On-Street Parking Plan for the Depot Street Reconstruction Project.

**PUBLIC HEARINGS:**

Time Estimate

Page

14. 10 Minutes **WATER-EFFICIENT LANDSCAPING ORDINANCE** .....40  
Public Hearing Opened.  
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed  
Council Discussion.  
Action- **Motion to Waive** the Reading in Full of Ordinance Amending Chapter 18.73 (Water Conserving Landscapes) of the Municipal Code.  
Action- **Motion to Introduce** Ordinance by Title Only. (Roll Call Vote)

**OTHER BUSINESS: (CONTINUED)**

Time Estimate

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15. 5 Minutes **RETROACTIVE FEE REVISIONS FOR SOLAR PHOTOVOLTAIC ROOF SYSTEM PERMITS** .....51  
**Recommended Action(s):**  
1. **Discuss** Recommendation from Utilities and Environment Sub-Committee to Approve Retroactive Fee Revisions for Solar Photovoltaic Roof System Permits Issued within the Last 36 Months; and  
2. **Provide Direction** to Staff Regarding Whether or Not to Issue Refunds.

	<b>Time Estimate</b>		<b>Page</b>
16.	5 Minutes	<b><u>APPOINTMENT TO LIBRARY, CULTURE &amp; ARTS COMMISSION</u></b> .....	52
		<b><u>Recommended Action(s):</u></b>	
		1. <b><u>Council Discussion</u></b> Regarding Appointment Recommendation; and	
		2. <b><u>Ratify</u></b> Mayor's Appointment to the Library, Culture & Arts Commission; Term Ending April 1, 2007.	

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

**ADJOURNMENT**

**PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA**

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

**PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA**

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

**NOTICE**

**AMERICANS WITH DISABILITIES ACT (ADA)**

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

**NOTICE**

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

**NOTICE**

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

### **INDOOR RECREATION CENTER PROJECT – DECEMBER CONSTRUCTION PROGRESS REPORT**

**RECOMMENDED ACTION(S):** *Information Only*

#### **EXECUTIVE SUMMARY:**

Previous Council action awarded the contract for construction of the Indoor Recreation Center Project to West Coast Contractors, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of December. This report has been sent to our webmaster for posting on the City's website. Current construction activity can be viewed live on the internet at [www.novapartners.com/mhirc](http://www.novapartners.com/mhirc).

Weather permitting, the masonry subcontractor should complete the block walls at the natatorium this coming month. Except for the natatorium, all of the structural steel has been erected. The contractor continues to place the metal roof deck working towards "drying in" the building. Barring any unforeseen circumstances, the anticipated Grand Opening is September 5, 2006. The project is currently on schedule and within budget.

**FISCAL/RESOURCE IMPACT:** None

**Agenda Item # 1**

**Prepared By:**

**Sr. Project Manager**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

### **APPROVAL OF PURCHASE ORDERS TO US FILTER FOR PERCHLORATE REMOVAL SYSTEMS OPERATION AT NORDSTROM AND TENNANT WELLS THROUGH 6/30/06**

**RECOMMENDED ACTION(S):** Authorize issuance of Purchase Orders to US Filter in the amount of \$123,300.

**Agenda Item # 2**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** As Council is aware, due to perchlorate contamination emanating from the Olin site, the City leased removal systems from US Filter for two City facilities: Nordstrom and Tennant wells. Santa Clara Valley Water District (SCVWD) agreed to reimburse the City for operational costs of the perchlorate removal system at Tennant Well from November 1, 2004 through October 31, 2005.

A purchase order was authorized April 2005 for the Nordstrom Well site in the amount of \$158,082. This purchase order was limited to five month's operational costs which included equipment and the cost for treating water at \$231 per acre foot produced. It was necessary to extend the Nordstrom Well run-time period for an extra month to meet the city's water demand. This increased the City's cost by \$24,200. The cost for extending the treatment at the Nordstrom Well site when added to the estimated cost of restarting the operation in May, 2006 is \$43,400.

In December 2004 a purchase order in the amount of \$101,500 was authorized for the Tennant Well site for Fiscal Year 2004/2005. Due to a credit that the City had with U.S. Filter the only costs incurred during last fiscal year was the monthly lease amount. The amount saved in Fiscal Year 2004/2005 was used towards this current Fiscal Year 2005/2006 billings. However, to continue running the system at Tennant Well through the end of this fiscal year will cost an additional \$79,900.

It is estimated the cost of the perchlorate removal systems in FY 06/07 (12 months operation at Tennant Well, 5 months operations at Nordstrom Well) will be \$325,000. Staff will return to Council with a request to fund the 06/07 operation in June 2006.

Through December 2005, the City has treated 584,000,000 gallons of water and removed 60 pounds of perchlorate from our Nordstrom Well. Also through December 2005, the City and SCVWD have treated 243,000,000 gallons of water and removed 26 pounds of perchlorate from our Tennant Well.

**FISCAL/RESOURCE IMPACT:** As with all of our previous expenses for perchlorate related contamination, staff and our special counsel will do all we can to seek reimbursement from the responsible parties. Sufficient funding does exist in the current year's budget based upon the surcharge to water rates enacted by City Council specifically to fund perchlorate removal costs. There is no resource impact, as the work is included in the current year Public Works workplan.





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JANUARY 18, 2006***

### **APPROVE LAND LEASE FOR GO KIDS AT GALVAN PARK**

#### **RECOMMENDED ACTION(S):**

Approve attached land lease agreement and authorize the City Manager to execute the land lease of a portion of Galvan Park to Go Kids a non-profit corporation for the fee of \$1.00 per year.

**EXECUTIVE SUMMARY:** The City of Morgan Hill is the owner in fee of real property known as Galvan Park. Go Kids, a non-profit corporation, desires a land lease upon which currently exists a modular office space along the northerly boundary of the park. Unknown to the City and Go Kids this land lease expired in 1997. It has come to the attention of the City that Go Kids desires to renew their land lease at this time.

The term of the proposed land lease is 3 years and may be renewed at the sole option of the City. The permission to use the land is for operating a day care facility for the benefit of low and moderate income households. The day care facility is located in a modular office space owned exclusively by Go Kids.

**FISCAL/RESOURCE IMPACT:** Fiscal impact is nominal. Minimal staff costs are associated with lease preparation.

**Agenda Item # 3**

**Prepared By:**

**Deputy Director of  
Public  
Works/Operations**

**Approved By:**

**Department Director**

**Submitted By:**



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: January 18, 2006**

**AMENDMENT TO CONTRACT PROVIDING PUBLIC  
WORKS INSPECTIONS ON AN AS-NEEDED BASIS**

**RECOMMENDED ACTION(S):**

1. Approve amendment to the contract with Testing Engineers, Inc. (TEI) to increase the contract amount by \$50,000.
2. Authorize the City Manager to execute the contract amendment, subject to City Attorney review.

**Agenda Item # 4**

**Prepared By:**

\_\_\_\_\_  
**Deputy PW Director -  
Engineering**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

**EXECUTIVE SUMMARY:** Staff utilizes Testing Engineers, Inc. (TEI) to provide construction inspection services and materials testing for street and utility projects.

On July 6, 2005, the City Council approved a contract with TEI for \$90,000 to assist Public Works inspection staff on an as needed basis to ensure that all public improvements associated with development and CIP projects are installed properly and that delays in the construction projects are minimized. In anticipation that the City would fill the vacant full-time public works inspector position, the contract was set up only to cover a partial year's worth of inspection services (until the full-time position could be filled) and special inspection services that TEI normally provides. However, the recruitment and hiring process for the full-time inspector has taken longer than anticipated thus extending the need for the contract inspection services. In addition, a larger than expected number of both capital improvement and land development projects this past fall and winter has resulted in contract funds being expended sooner than anticipated. Therefore, an additional \$50,000 is needed to cover the cost of critical inspection services for the balance of the fiscal year. The funds to pay for these services are collected from the fees paid for land development processing or from budgeted CIP project accounts.

**FISCAL/RESOURCE IMPACT:** No appropriation is necessary as the additional contract cost for the contract inspection services will be funded from current year Contract Services sub-account in the Public Works Community Development Engineering and Public Works Capital Improvement Program accounts. The contract service is to augment City inspection staff and therefore this action has a positive resource impact.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: January 18, 2006***

### **ACCEPTANCE OF MONTEREY ROAD BIKE DETECTION INSTALLATION PROJECT**

#### **RECOMMENDED ACTION(S):**

1. Accept as complete the Monterey Bike Detection Installation Project in the final amount of \$40,903.5.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

#### **EXECUTIVE SUMMARY:**

The contract for the Monterey Road Bike Detection Installation Project was awarded to Beltramo Electric, Inc., by the City Council at their August 24, 2005, meeting in the amount of \$36,455, plus a ten percent contingency of \$3,645, for a total not to exceed amount of \$40,100.50.

The scope of work for this project includes adding bicycle sensitive detector loops and/or replacing existing loops with bicycle sensitive detector loops at signalized intersections along Monterey Road, between Watsonville Road and Burnett Avenue. In addition, loop detector pavement markings will be installed where appropriate.

Three change orders totaling \$730 were approved for unforeseen conditions, which brings the total contract amount to \$37,185.00. The work has been completed in accordance with the plans and specifications.

#### **FISCAL/RESOURCE IMPACT:**

The total construction cost for this project is \$37,185.00. The project is funded with 04/05 budget under CIP# 534004, \$42,000 (202-TDA ARTICLE 3) and \$10,000 (309-Traffic Impact Fees) for a total of \$52,000.

**Agenda Item # 5**

**Prepared By:**

\_\_\_\_\_  
**Junior Engineer**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

Record at the request of  
and when recorded mail to:

CITY OF MORGAN HILL  
CITY CLERK  
17555 Peak Avenue  
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION  
CITY OF MORGAN HILL

**MONTEREY ROAD BIKE DETECTION INSTALLATION PROJECT**

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 5<sup>th</sup> day of October, 2005, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Beltramo Electric Inc., on August 24, 2005, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed in November, 2005, accepted by the City Council on January 18, 2006, and that the name of the surety on the contractor's bond for labor and materials on said project is Contractors Bonding and Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, California

Dated: \_\_\_\_\_, 20\_\_.

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Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk  
City of Morgan Hill, CA  
Date:



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JANUARY 18, 2006***

### **DOWNTOWN TRAFFIC CALMING –SIX MONTH REVIEW AFTER JUNE, 2005 INITIAL INSTALLATION**

**RECOMMENDED ACTION(S):** For information only at this time

**EXECUTIVE SUMMARY:** At its January 26, 2005 meeting, the Council considered various traffic calming options for Monterey Road in the downtown area and directed staff to implement four measures. These measures included the following: 1) Narrowing of traffic lanes from 12' to 10.5' wide, 2) Painting high-visibility bars on the unsignalized First and Third Street crosswalks, 3) Installing speed cushions at Third Street, and 4) Planting of median trees both north and south of the Monterey/Fourth Street intersection.

A three month study was conducted and the findings presented to the city council on October 19, 2005. The study found that vehicular speeds and volumes in the downtown had not changed with the implementation of the traffic calming measures listed above. However, vehicular speeds in the immediate vicinity of the Third Street pedestrian crossing had been reduced to approximately 15 MPH due to the installation of the speed cushions.

Accident data was also reviewed as part of the study. The data revealed that four reportable accidents occurred on Monterey Road at the Third Street intersection during the first three months following the installation of the speed cushions. Three of the accidents involved rear-end collisions. The fourth accident involved a single vehicle, which lost the trailer it was pulling. No new accidents have been reported in the past three month.

Complaints about the speed cushions out numbered those received in favor of by 3 to 1 during the first three months following their installation. A total of 31 comments were received, 24 against and 7 in favor. Staff continues to receive sporadic comments about the speed cushions with the ratio remaining the same.

Staff believes it is prudent to continue to monitor the speed cushions for an additional six months so that a full year of data can be assessed in determining their overall effectiveness. The speed cushions have had the desired affect of reducing the speeds on Monterey Road at the Third Street pedestrian crossing. However, the potential for accidents due to the slowing of some vehicles remains a concern. Staff will return to the Council with a report in six months.

**FISCAL/RESOURCE IMPACT:** None at this time.

**Agenda Item #6**

**Prepared By:**

**Senior Civil Engineer**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

**Agenda Item # 7**

**Prepared By:**

**Asst. to the City  
Manager**

**Submitted By:**

**City Manager**

### **CONSULTING AGREEMENT FOR DEVELOPMENT PROCESSING SERVICES CUSTOMER SERVICE STUDY**

#### **RECOMMENDED ACTION:**

**Authorize** City Manager to execute contract with Colgan Consulting Corporation for the purpose of conducting a customer service study of the City of Morgan Hill's development processing services.

#### **EXECUTIVE SUMMARY:**

One project in the 2005/06 workplan is to conduct a customer service study of the City's development processing services. Coordinated by the City Manager's Office, the study will review, from a customer's perspective, all activities associated with processing development applications, from the applicant's initial contact with the City through final building inspections and issuance of occupancy permits.

The intent of this study is threefold:

- 1) To review and evaluate the implementation of the recommendations made in the 2002 Development Processing Services Study including the effectiveness of the recommendations;
- 2) To assess the current level of customer service for development processing services; and
- 3) To recommend cost-effective improvements.

Given existing staff assignments and the special expertise required for this study, staff recommend hiring a consultant to conduct the study. Staff conducted a Request for Proposals process in November, receiving four responses. The responses were reviewed by representatives from all departments which will be involved in the study (Building Assistance and Housing Services, Community Development and Public Works) and staff recommend using Colgan Consulting for this study. Joe Colgan was the lead consultant on the 2002 study on the City's development processing services. The proposed consulting agreement is provided as Attachment A.

In addition to reviewing City implementation of the recommendations contained in the 2002 study, Mr. Colgan will solicit input from staff on their views of customer service issues; interview approximately 20 customers; develop an action plan and training plan to respond to problems identified; and develop a final report which will be presented to the City Council. The study is expected to be complete in June 2006.

**FISCAL/RESOURCE IMPACT:** The contract amount of \$36,000 has been budgeted in the Building Assistance and Housing Services, Community Development and Public Works budgets and does not require a budget adjustment. The workload associated with administration of and participation in the study can be handled without impacting other staff assignments.

## CONSULTANT AGREEMENT COLGAN CONSULTING CORPORATION

THIS AGREEMENT is made this \_\_\_\_ day of January, 2006, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Colgan Consulting Corporation, a California corporation ("CONSULTANT").

### RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City Council approval on \_\_\_\_\_.
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

### AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from January 18, 2006, until July 1, 2006.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of a customer service study of the City of Morgan Hill's development processing services. In this study, consultant shall: a) review and evaluate the implementation of the recommendations made in the 2002 Development Processing Services Customer Service Study including the effectiveness of the recommendations; b) assess the current level of customer service for development processing services; and 3) recommend cost-effective improvements.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1. **Amount.** (\$36,600). Compensation under this Agreement shall not exceed (\$36,600.)
  - 3.2. **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required, payment shall be based on hourly rates in Exhibit "B" attached and incorporated herein by this reference.
  - 3.3. **Records of Expenses.** CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.
  - 3.4. **Termination.** CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days' written notice.

4. **Insurance Requirements.**

4.1. **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability and automobile insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,
- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

4.2. **Workers Compensation Insurance.** CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

4.3. **Insurance Types and Amounts.** CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain professional liability insurance in an amount of \$1,000,000 per claim.

4.4. **Acceptability of Insurers.** All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

4.5. **Provision of Agreement to Insurers.** CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY.



8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

10. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

11. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Colgan Consulting Corporation  
2740 Fulton Avenue, Suite 101  
Sacramento, CA 95821

Address of CITY is as follows:

Melissa Stevenson Dile	with a copy to:
City of Morgan Hill	City Clerk
17555 Peak Avenue	17555 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

12. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal or bid, which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

13. **Licenses, Permits, and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.

14. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

15. **Time of Essence.** Time is of the essence in the performance of this Agreement.

16. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by CONSULTANT, without prior written consent of CITY.

17. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

18. **Indemnification.**

18.1. For claims arising from CONSULTANT'S professional acts or omissions, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligence performance and/or willful acts or omission of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.

18.2. For any other claim arising from any other act or omission, performance or non-performance by CONSULTANT under this Agreement, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of this Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.

18.3. The only exception to CONSULTANT'S above-named responsibilities to protect, defend, and hold harmless CITY is due to the sole negligence of CITY as adjudged by a court of competent jurisdiction. CONSULTANT shall bear any initial burden of protection, defense, and hold harmless until such court judgment is rendered.

18.4. This agreement shall apply to all liability, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

19. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.

20. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

21. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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22. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

ATTEST:

THE CITY OF MORGAN HILL

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

APPROVED:

“CONSULTANT”

\_\_\_\_\_  
Risk Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Date: Dec. 27, 2005

APPROVED AS TO FORM:

JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP

By: \_\_\_\_\_

Interim City Attorney

Date: \_\_\_\_\_



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: January 18, 2006***

**Agenda Item #8**

**Prepared By:**

**Administrative Analyst  
Approved By:**

**Human Resources Dir.**

**Submitted By:**

**City Manager**

### **DELTA DENTAL BENEFIT PLAN**

#### **RECOMMENDED ACTION(S):**

Authorize the City Manager to execute amendments to the dental benefit plan.

#### **EXECUTIVE SUMMARY:**

In January, 2004, the City entered into an agreement with Delta Dental of California for an employee dental benefit plan. In March, 2005, the City received copies of amendments to the 2004 plan updating terms of coverage which are effective from January 1, 2005 to December 31, 2006. Adequate funds for this benefit plan are budgeted proportionally throughout the city budget and both the City and Delta Dental have been operating under the terms of the amended plan since January 1, 2005.

Although both Delta Dental and the City have been operating under the terms of the amendments, the documents themselves were never processed for signature. It is requested that the City Council authorize the City Manager to execute the attached amendments to the Delta Dental benefit plan.

#### **FISCAL IMPACT:**

No budget adjustment required.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

**Agenda Item # 9**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Chief of Police**

**Submitted By:**

**City Manager**

### **SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND**

#### **RECOMMENDED ACTION(S):**

1. Approve the FY2005/2006 Spending Plan for the Supplemental Law Enforcement Services Fund (S.L.E.S.F.)
2. Increase the FY2005/2006 Police Budget within the General Fund by \$50,000 for the cost of the MSO Prisoner Transport Vehicle

#### **EXECUTIVE SUMMARY:**

The Police Department has received \$100,000 in S.L.E.S.F. (COPS) funding in FY 2005/2006 and these funds must be spent or encumbered by June 2007. This appropriation must be used to fund front-line law enforcement efforts. Staff recommends funding the 2 Multi-Service Officer positions (MSO) and the 1 Community Service Officer (CSO) position in the form of salaries and a vehicle. The funds for the MSOs, CSO and the vehicle will be spent out of this year's General Fund and Equipment Replacement budgets and offset with S.L.E.S.F. funds. Legislation requires City Council to approve the Spending Plan at a public meeting and forward the approval to the County Supplemental Law Enforcement Oversight Committee.

#### **SPENDING PLAN FY 2005/2006**

##### Expenditures:

MSO (Patrol 010-3210)	
(2) Salaries	\$ 94,262
(1) MSO/Prisoner Transport Vehicle	\$ 50,000
(additional police vehicle and build out to include emergency equipment, radio and computer)	
CSO (Special Operations 010-3245)	
(1) Salary	\$ 54,000
<b>TOTAL</b>	<b>\$ 198,262</b>

##### Revenues:

October 2005 S.L.E.S.F. allocation	\$ 100,000
Ending Fund Balance June 30, 2005	\$ 98,262
<b>TOTAL</b>	<b>\$ 198,262</b>

#### **FISCAL IMPACT:**

Expenditures for the MSO and CSO salaries and MSO/Prisoner Transport Vehicle are offset by S.L.E.S.F. fund transfer to the General Fund in the amount of \$198,262.



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

### **PURCHASE OF POLICE MOTORCYCLES**

#### **RECOMMENDED ACTION(S):**

1. Authorize the purchase of two (2) motorcycles from the Huntington Beach Honda dealership through reliance upon the competitive bid process for a total cost of \$29,104.38.
2. Declare two (2) vehicles being replaced as surplus and authorize sale of these vehicles at auction.

#### **EXECUTIVE SUMMARY:**

The Police Department is requesting the replacement of two vehicles in the 2005/2006 budget year with two (2) police equipped motorcycles. The attached spreadsheet identifies the vehicles being replaced and the funding source. The total cost for the purchase of the police motorcycles is \$29,015.84. The amount includes tax, license and freight.

The City used the competitive bid process in accordance with Sec. 3.04.190 MHMC for these motorcycles. Five packets were sent out to various motorcycle dealerships, including those located in Morgan Hill and Gilroy. The Police Department received two sealed bids:

**Huntington Beach Honda - \$29,104.38**

**East Bay Motors - \$29,804.00**

The Department is aware of budget constraints and has evaluated the needs in regard to the replacement of vehicles. As part of the 05/06 budget, one of the police department's goals for this fiscal year was to reestablish the traffic enforcement unit based on the needs of the community. Staff recommends authorization based upon the need to provide a safe and efficient level of service required in the community.

In addition a spreadsheet is attached showing the two (2) vehicles staff is asking Council to declare as surplus and authorize the sale of these vehicles at auction.

#### **FISCAL IMPACT:**

The cost of these vehicles is funded in the Equipment Replacement Fund (790-8500) in the 05/06 budget as identified in the attached spreadsheet.

**Agenda Item # 10**

**Prepared By:**

**Commander**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**

## 2005-2006 VEHICLE REPLACEMENT

### POLICE DEPARTMENT

VEHICLE	REPLACE WITH:	COMMENTS/STATUS	COST	FUNDING/DIVISION
P00111 2000 Ford Police Interceptor	NEW  2006 Honda ST 1300 Motorcycle.	P00111 will be surplusd. This vehicle is six years old and requires more than routine maintenance to maintain the vehicle in working condition. Currently the mileage for this vehicle is <b>92356</b> .	Total: \$14,552.19	790-43830-8500 Police
P00113 2000 Ford Police Interceptor	NEW  2006 Honda ST 1300 Motorcycle.	P00113 will be surplusd. This vehicle is six years old and requires more than routine maintenance to maintain the vehicle in working condition. Currently the mileage for this vehicle is <b>95071</b> .	Total: \$14,552.19	790-43830-8500 Police

## 2005-2006 SURPLUS VEHICLES/EQUIPMENT

### POLICE DEPARTMENT

P00111	2000 Ford Police Interceptor
P00113	2000 Ford Police Interceptor



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: January 18, 2006**

**Agenda Item # 11**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1748, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1748, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On December 7, 2005, the City Council Introduced Ordinance No. 1748, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

The total employer contribution rate will increase during fiscal year 2006-07 by 2.211%. Employees will pay the 1% employee contribution rate increase and 25% of future employer rate increases.



**ORDINANCE NO. 1748, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES**

**WHEREAS**, on October 5, 2005 the City Council approved a Memorandum of Understanding with the Morgan Hill American Federation of State County and Municipal Employees (AFSCME) Local 101 for the period from July 1, 2005 to June 30, 2008; and,

**WHEREAS**, on October 5, 2005 the City Council approved a Memorandum of Understanding with the Morgan Hill Community Service Officers Association (CSOA) for the period from July 1, 2005 to June 30, 2008; and,

**WHEREAS**, Articles 8.02 and 8.10 of those current MOUs provides in pertinent part that "Effective June 18, 2006 the City will offer the PERS 2.5% @ 55 retirement program for the Unit": and,

**WHEREAS**, management and confidential employees are part of the City's Miscellaneous Group as defined by CalPERS regulations; and,

**WHEREAS**, the City Council wishes to take the necessary steps to amend its contract with PERS to implement the 2.5% @ 55 benefit for Miscellaneous Employees; and,

**WHEREAS**, the 2.5% @ 55 benefit for Miscellaneous Employees contract amendment is to become effective June 18, 2006;

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** That an amendment to the contract between the City Council of the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

**SECTION 2.** The Mayor of the City Council of the City of Morgan Hill is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

**SECTION 3.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or the applicability to other situations.

**SECTION 4.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this Ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the Regular meeting of the City Council of the City of Morgan Hill held on the 7<sup>th</sup> Day of December, 2005, and was finally adopted at a Regular meeting of said Council on the <sup>th</sup> Day of January, 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

∞ **CERTIFICATE OF THE CITY CLERK** ∞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the <sup>th</sup> Day of January, 2006.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## EXHIBIT

California  
Public Employees' Retirement System

# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Morgan Hill

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1964, and witnessed January 8, 1964, and as amended effective June 1, 1972, May 1, 1976, January 1, 1977, December 17, 1981, August 1, 1982, August 16, 1983, July 1, 1988, January 7, 1990, April 29, 1990, August 17, 1991, June 21, 1997, April 17, 1999, February 20, 2000 and July 1, 2002 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective July 1, 2002, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
  1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN 'EXHIBIT'

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1964 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

**NO ADDITIONAL EXCLUSIONS**

5. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after the effective date of this amendment to contract shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after the effective date of this amendment to contract shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).

PLEASE DO NOT SIGN "EXHIBIT"

7. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21574 (Fourth Level of 1959 Survivor Benefits).
  - b. Section 20903 (Two Years Additional Service Credit) for local miscellaneous members only.
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 20965 (Credit for Unused Sick Leave).
  - e. Section 21024 (Military Service Credit as Public Service) for local police members only.
10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 16, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF MORGAN HILL

BY \_\_\_\_\_  
LORI MCGARTLAND, ACTING CHIEF  
ACTUARIAL & EMPLOYER SERVICES BRANCH  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest: \_\_\_\_\_

\_\_\_\_\_  
Clerk



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: January 18, 2006***

**Agenda Item # 12**

**Submitted By:**

**Mayor**

### **APPOINTMENT OF CITY ATTORNEY**

#### **RECOMMENDED ACTION(S):**

1. **Appoint** Janet C. Kern as City Attorney for the City of Morgan Hill;
2. **Approve** employment agreement; and
3. **Authorize** the Mayor to execute it on behalf of the City.

#### **EXECUTIVE SUMMARY:**

Following an extensive recruitment and evaluation process, the City Council has selected Janet C. Kern to serve as City Attorney. Ms. Kern has an impressive background and record of accomplishments, most recently as Senior Associate Counsel for the San Jose Redevelopment Agency. A short biography is attached.

Ms. Kern has agreed to the terms outlined in the attached Employment Agreement which is recommended for Council approval. Under the agreement, Ms. Kern will start work on February 21, 2006 with a salary of \$150,000.

#### **FISCAL IMPACT:**

The costs of the agreement will be accommodated within the budget of the City Attorney's Office.

## **JANET C. KERN**

Janet Kern has been senior associate counsel at the San Jose City Attorney/General Counsel's Office for the past eight years. During that time, Ms. Kern was a key City staff member in closing various major real estate projects, such as the development of the high-rise downtown Marriott Convention Center Hotel, rehabilitation of various historic downtown commercial buildings, development of multi-million dollar high-rise mixed use (parking, retail, residential) projects now under construction, expansion of the Edenvale industrial area (just north of Coyote Valley), acquisition and planned redevelopment of the 16-acre North San Pedro site and adoption of several new redevelopment project areas. Her role included providing advice and counsel to public boards and advisory groups. Ms. Kern, who is licensed to practice law in both California and Colorado, formerly served as corporate counsel for Johns-Manville Corporation, Waste Management, Inc. and as outside counsel for various national corporations primarily in the telecommunications industry. Ms. Kern earned her law degree from the University of Utah and has a bachelor's degree in Mass Communications from the same university.



**EMPLOYMENT AGREEMENT BETWEEN  
CITY OF MORGAN HILL AND JANET C. KERN**

1. **Parties:** The parties to this Agreement are the CITY OF MORGAN HILL ("CITY") and JANET C. KERN ("KERN").
2. **Purpose:** The purpose of this Agreement is to provide for the employment of KERN as City Attorney of CITY, as currently provided by Title 3, Chapter 2.09 of the Municipal Code of the City of Morgan Hill.
3. **Duties:** CITY hereby agrees to employ KERN to perform the functions and duties of City Attorney for the CITY and General Counsel of the Redevelopment Agency ("RDA") as specified in the Municipal Code of the City of Morgan Hill, the Job Description, and any other applicable Ordinances, Resolutions or Policies, and to perform such other legally permissible and proper duties and functions the CITY shall from time-to-time assign. KERN agrees that, to the best of her ability and experience, she will at all times loyally and conscientiously perform all of the duties and obligations required of her either expressly or implicitly by the terms of this Agreement. KERN agrees to work Full Time for the CITY and RDA and not to engage in any other practice of law except as specifically permitted herein. The term "Full Time" shall not exclude KERN working from time-to-time on pro bono legal services. Such work is expressly permitted so long as it does not interfere in any way with her work as City Attorney. Further, working Full Time shall not be construed to exclude occasional teaching, writing or pro bono service performed on KERN's time off.
4. **Term of Agreement:**
  - 4.1 City and KERN agree that employment shall start on Tuesday, February 21, 2006.
  - 4.2 KERN agrees to remain in the employ of the CITY until June 30, 2009, and agrees to forebear from accepting other full-time employment until June 30, 2009 ("Termination Date"), unless such Termination Date is modified as provided hereafter.
  - 4.3 On July 1, 2008, and every July 1<sup>st</sup> thereafter, the Termination Date of this Agreement shall be automatically extended for an additional year unless by April 1, 2008, and every April 1<sup>st</sup> thereafter, the City provides written notice to KERN of its determination to not extend the term. In the event of such

written notice, the termination date of the Agreement shall be June 30 of the following calendar year, fifteen (15) months subsequent to the notice.

**5. Separation from Employment:**

5.1 The City Council may terminate the services of KERN at any time, for any reason or no reason, it being expressly understood and agreed between the parties that KERN serves as an at-will employee of the City Council.

5.2 Only in the event of termination from employment by the City Council without "Good Cause," shall KERN be entitled to receive compensation consisting of a lump-sum payment of twelve (12) months of base salary and Benefits ("Severance Payment"). "Good Cause" shall include, but not be limited to, breach of contract, embezzlement, fraud, disbarment or suspension from any state bar, self-dealing, abandonment of the job, conviction of any felony, conviction of a misdemeanor involving moral turpitude or any illegal act involving personal gain to KERN or disability as defined in Paragraph 6. No Severance Payment shall be made if the term of the Agreement is complete and the Agreement is not renewed or extended.

"Benefits" shall include all benefits payable to or on behalf of KERN with the exception of: vacation, management leave, and administrative leave (other than those amounts already earned by KERN as of the date of separation). Both salary and benefits shall be computed as of the rates in effect as of the date of separation from employment.

The Severance Payment will release CITY from any further obligations under this Agreement, and any claims of any nature that KERN might have against the CITY by virtue of her employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, KERN agrees to execute and deliver to the CITY a signed document releasing CITY of all claims that KERN may have against CITY. In return for such Severance Payment, KERN agrees to be available for consultation and assistance to the Interim City Attorney or any other Council appointee.

If, and only if, KERN is terminated for the Good Cause set forth in Paragraph 6, KERN shall be entitled to severance in an amount equal to the difference between the Severance Payment and any amount of CITY insurance disability payments received in the first year of disability. Such payment shall be made monthly or in a lump sum at the CITY's sole discretion. Such payment shall not exceed the Severance Payment and such payment shall not exceed the difference, in the first year, between the Severance Payment and any amount of CITY Insurance disability payments. Such payment shall be treated as the "Severance Payment" for all other purposes.

5.3 KERN may resign at any time from her position with the CITY provided that she gives the CITY thirty (30) days' written notice. Should KERN not provide the CITY with thirty (30) days' written notice, she shall not be entitled to cash out of any benefits other than as required by law.

6. **Disability:** Disability shall be defined as the inability to perform the full range of the essential functions of her position because of sickness, accident, injury, mental incapacity or other health reasons, for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave and exhaustion of all leave available under the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family Medical Leave Act, the California Family Leave Act and any other statutorily provided leave.
7. **Compensation:**
  - 7.1 CITY shall pay KERN the annual salary of One Hundred Fifty-Thousand Dollars (\$150,000).
  - 7.2 CITY agrees to provide KERN a car allowance of Four Hundred Fifty Dollars (\$450) per month.
  - 7.3 CITY agrees to pay KERN's California Bar Membership dues and expenses reasonably incurred to satisfy her MCLE requirements. All other professional development, conference fees and similar expenses are to be paid out of the City Attorney's Department Budget as provided in Paragraph 11.
  - 7.4 KERN shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the City's Management salary resolution to the extent that provision of such benefits are not in conflict or duplicative of the specific benefits set forth in this Agreement.
  - 7.5 CITY shall pay a total of three percent (3%) of KERN's base salary into CITY'S deferred compensation plans. KERN may apportion the CITY's contribution between the CITY's plans as she desires, but in no event shall the CITY's total contribution exceed the percentages listed herein. Payments shall be made on the same schedule as salary payments. In the event the deferred compensation exceeds the Federal deferred compensation maximum, KERN shall have the compensation paid in a taxable form.
  - 7.6 Except as otherwise provided in this Agreement, KERN shall receive an annual cost of living adjustment in her base salary equal to the percentage increase in the San Francisco-Oakland/San Jose Urban Wage Earner Index, Base rate index, for the one year period ending on June 30 of each year of this Agreement. There shall be no cost of living adjustment on June 30, 2006 and the first annual cost of living adjustment shall be made for the one year period ending June 30, 2007.

8. **Performance Goals and Evaluation:** The City Council shall review and evaluate the performance of KERN annually. These evaluations shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law. Nothing in this provision shall prevent the parties from evaluation of performance at times other than as stated herein. Any delay or other failure to satisfy any or all of the evaluation steps described herein shall not affect the CITY's rights regarding separation from employment.
9. **Sick Leave, Holidays, Vacation, Leave Without Pay, Bereavement Leave, and Sick Leave Buy Out:** KERN shall be entitled to accrue, and to have credited to her personal account, vacation at the annual accrual rate of four (4) weeks a year. Sick leave shall be as provided to department directors. However, KERN shall begin employment with a balance of five (5) days of sick leave. KERN shall be entitled to holiday, leave without pay, bereavement leave and sick leave buy-out the same as other management employees of the CITY. KERN shall be entitled to accrual of vacation time to the extent such benefit is offered to other management employees.
10. **Retirement:** CITY agrees to pay the PERS-Employee contribution in the amount of Seven Percent (7%).
11. **Professional Development:** The CITY hereby agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of KERN for professional development and official travel, meetings and occasions adequate to continue the professional development of the City Attorney and to adequately pursue necessary official and other functions of the CITY, including, but not limited to, the Annual Conference of the League of California Cities, the Spring City Attorneys' Conference, and the Annual Conference of the California Redevelopment Association. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.
12. **Non-Liability of Officials and Employees:** No official or employee of the CITY shall be personally liable for any default or liability under this Agreement.
13. **Bonding:** CITY shall bear the full cost of any fidelity or other bonds required of KERN under any law or ordinance.
14. **Other Terms and Conditions of Employment:**
  - 14.1 The City Council, in conjunction with KERN, shall fix any other terms and conditions of employment, as it may determine from time-to-time, relating to the performance of KERN, provided such terms and conditions are not

inconsistent with or conflict with the provisions of this Agreement or other applicable law.

- 14.2 All provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the City Attorney as they do other employees of the CITY, in addition to said benefits enumerated specifically for the benefit of KERN, except as to the extent that such rules and regulation are in conflict with this Agreement.
15. **No Reduction in Benefits:** The City shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to KERN.
16. **Notice:** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.
- 16.1 Notice to KERN shall be sent to:
- 1531 Cottonwood Drive  
Salinas, CA 93905
- 16.2 Notice to CITY shall be sent to:
- |  |     |   |
|--|-----|---|
| Mayor<br>City of Morgan Hill<br>17555 Peak Avenue<br>Morgan Hill, CA 95037 | and | City Manager<br>City of Morgan Hill<br>17555 Peak Avenue<br>Morgan Hill, CA 95037 |
|--|-----|---|
17. **General Provisions:**
- 17.1 The text herein shall constitute the entire agreement between the parties.
- 17.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of KERN.
- 17.3 This Agreement shall become effective on the latest date listed below. This Agreement supersedes any other contract or agreement between the CITY and KERN.

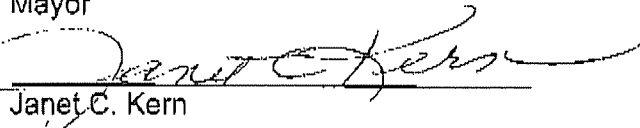
- 17.4 If any provision, or any portion therefore, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be effective, and shall remain in full force and effect.
- 17.5 The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
- 17.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and KERN.
- 17.7 In the event that any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.
- 17.8 This Agreement shall be interpreted as though prepared by both parties.

## CITY OF MORGAN HILL

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

By:   
Janet C. Kern

ATTEST:

APPROVED AS TO FORM:

JORGENSEN, SIEGEL, McCLURE &  
FLEGEL, LLP\_\_\_\_\_  
City Clerk\_\_\_\_\_  
Interim City Attorney



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

### **DEPOT ST. RECONSTRUCTION PROJECT ON-STREET PARKING**

**RECOMMENDED ACTION(S):** Approve staff recommended on-street parking plan for the Depot St. Reconstruction project.

#### **EXECUTIVE SUMMARY:**

The \$2.9 Million Depot Street Reconstruction Project is funded by a Transportation for Livable Communities (TLC) Capital Grant through the Metropolitan Transportation Commission (MTC). The scope of the project is to reconstruct Depot Street from Main Avenue to Fifth Street in conformance with the City's Downtown Plan. The TLC program is federally funded and is intended to pay for transportation infrastructure improvements that enhance pedestrian, bicycle and transit facilities. In the City's application for the grant funds the project was described as a reconstruction of Depot St. that would provide curb and gutter, wide tree-lined sidewalks, pedestrian amenities, striping for one lane of traffic in each direction, a bike lane in each direction and parking on only one side of the street. The limitation for parking on only one side of the street was driven by the lack of available right-of-way to place parking on both sides and a grant funding condition limiting the ability to favor parking over pedestrian amenities.

Upon successful receipt of the grant, the City was put on a very tight time frame for designing the project and having it under construction. The project's final design must have MTC approval by April 30, 2006. Failure to meet the required deadline will result in the loss of grant funds.

During the course of design, staff has held several public meetings with various stakeholders to describe the project and to solicit input into the various design elements of the project. Among those invited to and participating in the meetings were property owners and business owners along Depot St and members of the Downtown Association.

The attached January 12 memorandum helps clarify the parking situation. Given the constraints of the project, the most optimum on-street parking configuration will produce 30 parking spaces. Staff believes that the City's public parking lot along the east side of Depot St. between Second and Third Streets has available capacity and will provide parking spaces for those tenants and patrons on that block who lose on-street parking as a result of this project.

Staff is requesting City Council approval of the proposed on-street parking plan that would establish parking along the east side of Depot St. from Main Avenue to Third Street and along the west side from Third Street to Fifth Street.

#### **FISCAL/RESOURCE IMPACT:**

There are no fiscal/resource impacts.

<b>Agenda Item #</b> <i>13</i>
<b>Prepared By:</b> <i>Ken Bala</i> Deputy Director
<b>Approved By:</b> <i>[Signature]</i> Public Works Director
<b>Submitted By:</b> <i>[Signature]</i> City Manager



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *January 18, 2006*

### **WATER-EFFICIENT LANDSCAPING ORDINANCE**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**EXECUTIVE SUMMARY:** Consistent with the Council's interest in water conservation, staff has proposed a number of separate activities designed to encourage water-conserving practices. Given the large amounts of water that are applied to landscapes, staff has researched approaches that can be taken to reduce the amount of water dedicated to irrigation. One area that has generated discussion is the generous use of turf in many landscapes. To address this issue, staff has developed a draft new landscaping ordinance that aims to reduce the water consumed by new landscapes, while striking a reasonable balance between aesthetic concerns and water supplies. Key features of the proposed ordinance are:

1. Requires more extensive landscaping plans with specific required elements to be developed by licensed professionals in order to properly balance aesthetic and conservation concerns;
2. Requires "hydrozoning" (grouping plants according to water needs) to promote irrigation efficiency;
3. Includes both performance-based and standards-based requirements:
  - a. Performance-based: Entire landscape must meet water budget
  - b. Standards-based: Plants must be selected from appropriate lists; turf is limited to 25% of landscaped area; and overhead landscaping prohibited in narrow areas;
4. Limits regulation of single-family homes only to the turf restrictions;
5. Exempts parks, schoolyards, and other recreational landscapes;
6. Exempts all existing landscapes unless undergoing major revisions

Staff invited local developers to a meeting to discuss the proposed ordinance and received no significant comments about the proposal.

Staff recommends that the proposed ordinance be introduced in order to encourage the efficient use of water in new Morgan Hill landscapes.

A second, complimentary activity to the adoption of this ordinance is the City's support for the turf replacement incentive program. This program, which is about to be implemented by the Water District, aims to reduce the amount of irrigated turf in existing landscapes by providing funding for its replacement. It is anticipated that the combination of these two programs will have a significant long-term impact on water use in Morgan Hill.

**FISCAL/RESOURCE IMPACT:** Preparing this ordinance and supporting its implementation are an anticipated and included activity in the work program of the Public Works Department.

**Agenda Item # 14**

**Prepared By:**

**Program Administrator**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



**ORDINANCE NO. XXXX, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING CHAPTER 18.73 (WATER CONSERVING LANDSCAPES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE ESTABLISHMENT OF LANDSCAPE REGULATIONS PROMOTING THE EFFICIENT USE OF WATER**

**WHEREAS**, the City of Morgan Hill recognizes that there is a limited supply of water available to serve the residents and businesses of Morgan Hill; and,

**WHEREAS**, the City of Morgan Hill wishes to encourage the efficient use of water in order to optimize the use of the limited supply; and,

**WHEREAS**, the demand for water increases with additional development; and,

**WHEREAS**, landscapes provide recreation areas, clean the air and water, prevent erosion, offer fire protection, and replace ecosystems displaced by development; and,

**WHEREAS**, landscape design, installation, and maintenance can and should be water efficient; and,

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:**

**Section 1.** Chapter 18.73 (Water Conserving Landscapes) is hereby added to Title 18 (Zoning) of the Municipal Code of the City of Morgan Hill to read as follows:

**18.73.010 PURPOSE**

The purposes of this chapter are to promote efficient water use, to manage peak season water demand, and to preserve water storage in order to ensure a reliable and adequate public water supply by regulating landscape design, construction, and maintenance. It is also the purpose of this chapter to comply with Government Code section 65591, et seq., the Water Conservation in Landscaping Act.

## **18.73.020      DEFINITIONS**

For the purpose of this chapter, the following words shall have the meanings set forth below:

- A. "Applicant" means any individual, person, firm, entity or agency applying for a new water service connection or for a change to an existing service connection.
- B. "Common area" means those areas in a residential development maintained by either the developer or a homeowner's association.
- C. "Community garden" means a plot of land used by a community group for the cultivation of flowers, vegetables, or fruit.
- D. "Director" means the Director of the Community Development Department of the City of Morgan Hill, or the Director's authorized representative.
- E. "Increase in service" means an additional water meter or larger capacity meter is required to serve the proposed development, as determined by the Director.
- F. "Hydrozone" means a distinct grouping of plants with similar water needs and climatic requirements.
- G. "Landscape water budget" means, for design purposes, the upper limit of annual applied water for the established landscape. It is based on the region's reference evapotranspiration, type of plant material, and landscape area.
- H. "Modified service" means a substantial change in the water use characteristics of an existing service connection (for example, converting from a single family residential service to multiple residential service, or from a residential use to a commercial use).
- I. "Reference evapotranspiration" or "ET<sub>o</sub>" means a standard measurement of environmental parameters which affect the water use of plants.
- J. "Relandscaping" means any project that is required to modify the existing landscape as a condition of a land use approval, site review, or a discretionary permit.
- K. "Runoff" means irrigation water that is not absorbed by the soil or landscape area to which it is applied and flows onto other areas.
- L. "Total Landscaped Area" means the total outdoor area of a parcel upon which plants, pools, water features, and hardscapes not intended for the use of vehicles are placed.
- M. "Turf" means any hybridized grasses that, when regularly mowed, form a low, dense growth of leaf blades and roots which require frequent watering during the growing season.
- N. "WUCOLS" means Water Use Classification of Landscape Species, a guide published by University of California Cooperative Extension.

### **18.73.030      APPLICABILITY**

A. New, Increased, or Modified Development. The Director shall be responsible for assuring that all new development within the City shall comply with the standards set forth in this chapter as a condition of receiving a land use approval, except as indicated below.

B. Transfer of Ownership. A transfer of ownership in itself shall not necessitate any change to be in compliance with this Ordinance.

C. Relandscaping. Existing water customers that are required to relandscape or modify their landscapes as part of a land use approval process shall also be required to comply with the standards in the relandscaped area. Land use approval applications that do not result in a requirement to relandscape or modify a landscape shall not be required to comply with the standards of this Ordinance.

D. Single-Family and Two-Unit Residences. New single-family and two-unit residential customers shall be required to meet only the provisions regarding turf limits listed in subsection (d) of Section 6 if the landscaping is not being designed and installed by a developer as a component of a new development. The entire Ordinance applies to landscapes in new single-family and two-unit residential developments at which the landscaping is being installed by a developer as a component of the development.

E. Common Areas. Common areas of all new residential development shall be required to comply with the standards set forth below.

F. Recreation Areas. Schoolyards, parks, playgrounds, sports fields, and golf courses are exempt from the turf area limit set forth in subsection (d)(1) of Section 6. Every other standard listed in the Ordinance is applicable to schoolyards, parks, playgrounds, sports fields, and golf courses.

G. Exemptions. The standards do not apply to community gardens; ecological restoration projects that do not require a permanent irrigation system; registered historical sites where landscaping establishes an historical landscape style, as determined by a public board or commission responsible for architectural review or historic preservation; and enclosed, private yards and patios in multi-family residential developments. The standards do not apply to all development that has either been constructed or has submitted an application for a building permit before the effective date of this Ordinance.

### **18.73.040      LANDSCAPE PLAN REVIEW AND APPROVAL REQUIRED**

A complete landscape plan must be submitted and found to satisfy the requirements of this chapter before a building permit can be issued. Landscape plans submitted as part of a building plan application through the building department will be routed to the Planning Division in accordance with procedures established by the Chief Building Official for review. The

landscape plan shall include a statement signed by a licensed landscape architect certifying that the plan is in compliance with the requirements of this chapter.

### **18.73.050 CONTENTS OF PLANS**

Landscape plans shall consist of separate planting, irrigation, and landscape grading plans, all drawn at the same size and scale, and shall accurately and clearly include the following information:

A. Planting Plan. Planting plans shall identify and locate the following:

- (1) New and existing trees, shrubs, ground covers, and turf areas within the developed landscape area;
- (2) Planting legend indicating all plant species by botanical name and common name, spacing, and quantities of each type of plant by container size;
- (3) Designation of hydrozones;
- (4) Area, in square feet, devoted to landscaping and a breakdown of the total area by landscape hydrozones;
- (5) Property lines, streets, and street names;
- (6) Building locations, driveways, sidewalks, retaining walls, and other hardscape features;
- (7) Appropriate scale and north arrow;
- (8) Planting specifications and details.

B. Irrigation Plan. Irrigation plans shall identify and locate the following:

- (1) Irrigation point of connection (POC) to water system;
- (2) Static water pressure at POC;
- (3) Location and size of water meter(s);
- (4) Backflow prevention devices as may be required under Section 16.04.420 of the municipal code;
- (5) Location, size, and type of all components of the irrigation system, including automatic controllers, main and lateral lines, valves, sprinkler heads and nozzles, pressure regulator, drip and low volume irrigation equipment;

(6) Total flow rate (gallons per minute), and design operating pressure (psi) for each overhead spray and bubbler circuit; and total flow rate (gallons per hour) and design operating pressure (psi) for each drip and low volume irrigation circuit;

(7) Precipitation rate (inches per hour) for each overhead spray circuit;

(8) Irrigation legend with the manufacturer name, model number, and general description for all specified equipment, separate symbols for all irrigation equipment with different spray patterns, spray radius, and precipitation rate;

(9) Irrigation system details for assembly and installation;

(10) Recommended irrigation schedule for each month, including number of irrigation days per week, number of start times (cycles) per day, minutes of run time per cycle, and estimated amount of applied irrigation water, expressed in gallons per month and gallons per year, for the established landscape;

(11) Calculation of landscape water budget.

C. Grading Plan. (Note: Not required when landscaped slopes on the site are less than 10%.)

(1) Finish grades, contours, and spot elevations;

(2) Elevations of building floors, parking lots, and streets;

(3) Location and height of retaining walls;

(4) Drainage patterns and drainage control facilities.

## **18.73.060 LANDSCAPE WATER CONSERVATION STANDARDS**

A. Dedicated Landscape Water Meter.

(1) Separate City water service meters shall be required for all new landscaping, other than single family and two-unit residential customers, and for renovated landscape sites that result in expansion of the total landscaped area by more than 500 square feet. This meter shall be designated as an irrigation account.

B. Landscape Water Budget.

(1) The landscape water budget for new landscapes shall be based on 70 percent of reference evapotranspiration per square foot of landscaped area assuming a minimum irrigation efficiency of 70%.

(2) The estimated annual water use, calculated by adding the amount of water recommended in the irrigation schedule, or by another method approved by the Director, shall not exceed the annual landscape water budget.

#### C. Landscape Design.

(1) High water use plants, decorative pools, fountains, and water features shall be limited to not more than 10 percent of the total landscaped area. Water in decorative pools and fountains must be recirculated.

(2) All other plantings in nonturf areas shall be composed of low to moderate water use plants, as identified in *Water Use Classification of Landscape Species* (WUCOLS Guide) or East Bay MUD's *Plants and Landscapes for Summer-Dry Climates of the San Francisco Bay Region* or other species, including native plants, that are well adapted to the climate of the region and require minimal water once established.

(3) Plants having similar water requirements shall be grouped together in distinct hydrozones.

(4) Planting of trees, shade trees, and the protection and preservation of existing native species and natural areas is encouraged.

#### D. Turf Limits.

(1) The turf area shall be limited to not more than 25 percent of the total developed landscape area if an overhead spray sprinkler system is used. If subsurface irrigation is used exclusively to irrigate the turf area, the turf area shall be limited to not more than 50 percent of the total landscaped area. The limit does not apply to sites requiring large turf areas for their primary function as a recreation surface and there are no design alternatives, such as schoolyards, parks, and ball fields. For single-family homes and two-unit residences with landscaped areas smaller than 2,000 square feet, a total of 500 square feet of turf area shall be allowed providing the turf area complies with Sections 6(d)(2) and 6 (d)(3),.

(2) Turf shall not be placed in areas less than 8 feet wide or on slopes greater than 10 percent.

(3) Turf varieties shall be water-conserving species, such as tall and hard fescues.

#### E. Irrigation Design.

(1) All irrigation systems shall be designed to avoid runoff, over-spray, low-head drainage and other similar conditions where water flows off-site on to adjacent property, non-irrigated area, walks, roadways, or structures.

(2) Overhead sprinkler irrigation systems are prohibited in median strips, parking islands, parkway strips and similar narrow areas measuring less than five feet wide from curb to curb. Drip or low volume irrigation equipment may be required in certain other cases (i.e., sloping sites) where it is determined by the Director that overhead spray irrigation would result in waste of water due to excessive runoff from the site.

(3) Overhead sprinkler irrigation systems shall be separated from adjacent sidewalks, driveways, or other paved surfaces, wherever feasible, by a mulched border at least two feet in width consisting of shrubs, groundcover, or other landscape treatment that is not spray irrigated.

(4) Plants that require different amounts of water shall be irrigated by separate irrigation circuits and valves.

#### F. Irrigation Equipment.

(1) A pressure regulator shall be installed.

(2) All irrigation systems shall be equipped with a controller that includes dual or multiple programming capability, multiple start times, and a percent switch. Controllers that direct irrigation in relationship with CIMIS ETo data are specifically qualified to meet this provision.

(3) Sprinkler heads shall have matched precipitation rates within each control circuit valve and shall be selected for proper coverage and application rate, thereby minimizing over spray and runoff.

(4) Irrigation systems shall be equipped with rain sensing devices to prevent irrigation during rainy weather.

(5) Anti-drain check valves shall be installed at strategic points to minimize or prevent low-head drainage.

(6) All irrigation equipment installed shall meet the Plumbing Code adopted by the City when the application is submitted.

#### G. Soil Preparation and Mulching.

(1) Soil shall be prepared for planting by ripping and incorporating an organic amendment at the rate of six cubic yards per 1,000 square feet into the top six inches, or amended with organic material as recommended by landscape architect or soil laboratory report.

(2) All exposed surfaces of nonturf areas within the developed landscape area must be mulched with a minimum three-inch layer of organic material, except in areas of groundcover planted from flats, mulch depth shall be 1½ inches.

### **18.73.070      INSPECTIONS AND CERTIFICATIONS**

The Director shall have the right to enter upon any premises to make an inspection at any time before, during, and after irrigation system and landscape installation for the purpose of enforcing this chapter.

A. Certification of Completion before Occupancy. A licensed landscape architect or licensed contractor, certified irrigation designer, or other licensed or certified professional in a related field shall conduct a final field observation and shall provide a certificate of substantial completion to the City before a Certificate of Occupancy is issued. The certificate shall specifically indicate that plants were installed as specified, that the irrigation system was installed as designed, and that an irrigation audit has been performed, along with a list of any observed deficiencies. Certification shall be accomplished by completing and delivering a Certificate of Substantial Completion in a form acceptable to the City.

B. Final Inspection Before Occupancy. The Director may make a final inspection after completion of work to determine if the landscape improvements were completed in accordance with approved plans and with this chapter, and to require corrective measures if the requirements of this chapter are not satisfied. If corrective measures are necessary, the Certificate of Occupancy will not be issued until corrective measures are complete.

#### **18.73.080 IRRIGATION SYSTEM MANAGEMENT AND MAINTENANCE**

A. Maintenance. Landscape shall be maintained in good working condition and properly adjusted to ensure water efficiency. Any broken or malfunctioning equipment, including but not limited to main and lateral lines or control valves shall be repaired promptly with identical equipment to maintain the original design integrity.

B. Irrigation System Inspections. Irrigation system shall be inspected regularly to correct misaligned, clogged or broken heads, missing heads and risers, stuck valves, and leaks. The irrigation meter shall be read periodically to check consumption and detect any leakage.

C. Watering Schedule. Watering schedules shall be adjusted periodically to reflect seasonal variations in plant water requirements. Whenever possible, irrigation management shall incorporate the use of real-time, ET0 data from the California Irrigation Management Information System (CIMIS) or similar weather-based irrigation scheduling system.

D. Irrigation Operation. Irrigation shall be scheduled between the hours of 10:00 p.m. and 10:00 .am. when daily temperature and wind conditions are at a minimum.

#### **18.73.090 WATER USE MONITORING**

The City may monitor water use at each site with a dedicated irrigation meter for comparison with the landscape water budget on an annual basis. Water use will be based on utility records of the irrigation meter.

#### **18.73.100 ALTERNATIVE APPROACHES**

The purpose of this Ordinance is to make optimum use of the water resources available to the City water department service area and to manage peak season water demands. As technology



changes and more information is available regarding plant materials, irrigation equipment and techniques, and maintenance techniques that enhance water conservation, the Director may allow the substitution of well-designed conservation alternatives or innovations which equally reduce water consumption and meet the intent of this chapter.

#### **18.73.110 PENALTIES**

Any individual, person, firm, or agency violating any provisions of this chapter shall be subject to the penalties provided in Chapter 1.24, General Penalty.

#### **18.73.120 LIMIT OF CITY RESPONSIBILITY**

The City of Morgan Hill has limited water resources that are vulnerable to shortage in drought conditions. Residential, commercial and irrigation accounts in the water department service area are therefore subject to water restrictions or mandatory rationing during a declared drought emergency. Compliance with this chapter does not guarantee the survival of landscape plants or the availability of water for landscape irrigation based on this chapter. Irrigation shall be scheduled according to any emergency water use ordinance in effect.

**Section 2. Severability.** Should any provision of this Ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the Ordinance, and such severance shall not affect the remainder of the Ordinance.

**Section 3. Effective Date; Posting.** This Ordinance shall take effect thirty (30) days after its second reading. This Ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the Day of January 2006, and was finally adopted at a regular meeting of said Council on the Day of February 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

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**Irma Torrez, City Clerk**

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**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of February 2006.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: JANUARY 18, 2006**

### **RETROACTIVE FEE REVISION(S) FOR SOLAR PHOTOVOLTAIC ROOF SYSTEM PERMIT(S)**

#### **RECOMMENDED ACTION(S):**

Provide Direction to Staff Regarding Issuance of Refund Payment for Installation of a Solar System, and Make Necessary Appropriation

#### **EXECUTIVE SUMMARY:**

At the Council meeting of September 7, 2005, Mr. Robert Kushner spoke to the Council and requested a review and refund of building permit fees paid for installation of a solar-electric photovoltaic roof system installed on his commercial building located at 17660 Monterey Road. He pointed out that many other cities did not charge such high fees for solar energy systems. His project valuation was \$256,000 and the permit fee was \$5,389. The Council requested staff to research the matter and report back to the Council.

At the Council meeting of October 19, 2005, staff presented information regarding fees that would be charged by 6 other cities for Mr. Kushner's type of structure and project, finding that the permit fee charged by 5 of the cities would range from \$3,600 to \$6,000 (also based on construction valuations), but that the fee charged by the City of Oakland would be about \$155. At that meeting, the Council decided to refer the matter to the Utilities and Environment Council Subcommittee, to explore possible incentives for use of solar systems.

In preparing material for the December 19<sup>th</sup> Subcommittee meeting, staff determined that it would be feasible to recover full costs of issuing a building permit for solar systems by using a "electrical only" building permit, along with charging by the hour for plan check services. Most of the solar energy projects involve systems for single family residences with a construction valuation of between \$15,000 and \$25,000, and approximately 90 percent of the work that is being reviewed and inspected is electrical only. Based on this finding, the Community Development Department decided to implement the new approach to assessing solar building permit fees, which amounts to a fee of \$389 for the typical single family project. For larger or more complex projects, the fee will be higher due to assessing a higher number of plan check hours. For Mr. Kushner's type of project, the fees would have totaled \$1,482.70, including all costs for building plan review, inspections and plan review by the Planning Division.

Staff reviewed the new approach with the U & E Subcommittee on December 19, 2005, and also asked the Subcommittee to develop a recommendation to the full Council regarding a partial refund payment for Mr. Kushner. The Subcommittee is recommending a refund payment of \$3,906.62. It is also recommending that staff go back 3 years and issue payments to other solar project applicants, which would total another \$18,020.14 worth of refund payments, for a total of \$21,926.76.

It is important to emphasize that the potential payment(s) are not the result of any error in charging fees, and that charging fees based on construction valuation is not an incorrect approach, and to issue refund payments would be based on a policy to support solar energy systems. There is no requirement to adjust prior fees paid, and in most cases the refund payment would amount to only between \$200-\$400. Mr. Kushner's system is by far the most significant system installed over the past three years, with a high construction valuation. Only Mr. Kushner has submitted a refund request to the City. Staff therefore suggests that it may be a reasonable alternative for the Council to approve an appropriation of funds for a refund payment to Mr. Kushner only, in recognition of how different his commercial solar application is from most of the residential systems, and to demonstrate a City policy supportive of solar energy systems.

#### **FISCAL IMPACT:**

From \$0 to \$21,927, depending on the direction provided by the City Council.

**Agenda Item #15**

**Prepared By:**

**Chief Building Official**

**Approved By:**

**Community Development  
Department Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***January 18, 2006***

### **APPOINTMENT TO LIBRARY, CULTURE & ARTS COMMISSION**

#### **RECOMMENDED ACTION(S):**

- 1) Council Discussion regarding Appointment Recommendation
- 2) Ratify Mayor's Appointment to the Library, Culture & Arts Commission;  
Term Ending April 1, 2007

**Agenda Item # 16**

**Prepared By:**

\_\_\_\_\_  
**Council Services &  
Records Manager**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

#### **EXECUTIVE SUMMARY:**

On January 11, 2006, the City Council interviewed Mr. Stanley Salah to fill a current vacancy on the Library, Culture & Arts Commission. Unfortunately, due to meeting time constraints, the City Council did not provide the Mayor with a recommendation on appointment. Mayor Kennedy indicated that he would return to the City Council with a recommendation on appointment. Following the Council's discussion on the Mayor's recommendation on appointment, the Council will be asked to ratify the recommendation.

**FISCAL IMPACT:** There is no fiscal impact associated with this staff report.